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GOVERNMENT OF TAMIL NADU
2022

[Regd. No. TN/CCN/467/2012-14.
[R. Dis. No. 197/2009.
[Price: Rs. 15.20 Paise.



No. 245] CHENNAI, TUESDAY, APRIL 26, 2022
Chithirai 13, Subakiruthu, Thiruvalluvar Aandu-2053

Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

Judgement of the High Court of Madras in Election Petition No.07 of 2021

No. SRO G-3/2022.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 06th April, 2022 [16 Chetra, 1945 (Saka)] is published:-

No.82/TN-LA/(EP 7 of 2021)/2022:- In pursuance of section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Order of the Hon'ble High Court of Madras dated 25.02.2022 in Election Petition No. 7 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25TH DAY OF FEBRUARY 2022

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Election Petition No.7 of 2021

& Election Petition (Filing) No. 54183 of 2021

And

O.A.Nos. 553, 679, 680 of 2021 & 38 of 2022

ELP No.7 of 2021 & ELP (Filing) No. 54183 of 2021
& OA.No. 553 OF 2021

M.L.Ravi,
S/o. Lakshmi pathy,
No.21/11, Venkataraman Street,
Chennai - 600 001.

...*Petitioner*

-Vs-

1. The Election Commission of India,
Nirvachan Sadan,
No.1, Ashoka Road,
New Delhi - 110 001
2. The Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 600 009.
3. Returning Officer,
No-19, Chepauk Thiruvellikeni Assembly Constituency,
Chennai.
4. Udhayanithi Stalin. S, S/o. M.K.Stalin,
No.25/9, Chitaranjan Road,
Cenetoph 2nd Street,
Chennai - 600 018.
5. Raghu. C,
S/o. Chinathambi,
No.45/53, Vannara Street,
Chennai - 600 002.

6. Abid Bakshq H Hussain,
S/o.Bakshi Ali,
No.1, Syed Noor Street,
Anna Salai, Chennai - 600 002.
7. Rajendran. L,
S/o.Lakshmanan,
No.10, Samipandaram Street,
Chintadripet, Chennai - 600 002.
8. Kassali. A.V.A,
S/o.Abdul Gani,
4/17, Muslim New Street,
Seydunganallur, Srivaigundam Taluk,
Thoothukudi - 628 809.
9. Tabrez,
S/o.Abbas Baksh,
No.14B, Buddi begum Street,
Gopalapuram, Chennai - 600 086.
10. Mohammed Idris.K,
S/o. Kadar Mohideen,
No.1, A5, Block A, IInd floor Roohis Anja,
Panchayat Main Road, 1st Cross Street,
Perungudi, Chennai - 600 096.
11. Mohamed Rioz,
S/o. Mohammed Rafi,
No. 1-1-374, Ward 1, Rasi Nagar,
Maramangalathupatti, Salem- 636 030.
12. Jayasimmaraja.S.M, S/o. Muthumani,
No.C-1, Llyods Colony,
Royapettah, Chennai - 600 014.
13. Anandan. K,
S/o. Kannan,
No.5/2, Subramaniya Mudali Street,
Saidapet, Chennai - 600 015.
14. Kannan. C,
S/o.Chitravel,
No. 13, Gopalakrishnan Street,
Tiruvalluvar Nagar,
Adambakkam, Chennai - 600 088.

15. Ganesan. P,
S/o.Ponnusamy,
No.41, First Street,
Sathyavathi Nagar,
Padi, Chennai - 600 050.
16. Krishnadasan.S,
S/o.Sankaran Kutty,
No. 17, Vasantham Nagar,
Moolachatram,
Madhavaram Milk Depot,
Chennai - 600 051.
17. Chandranathan. S,
S/o.Sugumaran,
No. IE, New Balakrishnan Street,
Chindadiripet, Chennai - 600 002.
18. Srinivasan,
S/o.Kuppusamy,
No. 8/22, Anna Street,
Nehru Nagar, Velacherry,
Chennai - 600 042.
19. Senthil Kumar. H,
S/o.Harikrishnan,
No.113, Ellaiyamman Koil Street,
Vannanthurai, Chennai - 600 020.
20. Dilliraj.P,
S/o. Paneerselvam,
No. 122, Peyandiamman Koil Street,
Mylapore, Chennai - 600 004.
21. Nagarajan,
S/o. Balakrishnan,
No.946, 3rd Street,
Brindavan Nagar, KTC Nagar,
Palayamkottai, Tirunelveli - 627 011.
22. Balaji.K,
S/o. Karunakaran,
No.42/1, Anna Street,
Thiruvanmiyur, Chennai-600 041.
23. Balaji.C,
S/o.Chalika Masthan,
No.54, Swathantra Nagar,
2nd Street, Lloyds Road,
Chennai - 600 005.

24. Manikandan.E,
S/o.Elankali,
No. 14/24, Arunachalapuram Main Road,
Adyar, Chennai - 600 020.
25. Madanagopal .T,
S/o. Thiyagarajan,
No.9/17, Manickam Street,
Choolai, Chennai - 600 112.
26. Mohammed Hussain,
S/o. Nizam Basha,
No.2, Munusamy Nagar,
Triplicane, Chennai - 600 005.
27. Muniyandi, S/o. Subramanian,
No. 15, 12th Street, Abiramai Avenue,
Kaviarasu Kannadasan Nagar, Chennai - 600 118
28. Ravi.E,
S/o.Ettiyan,
No. 19/37, Ratnakutli Apartments,
T.P.Koil Street, Triplicane,
Chennai - 600 005. ...Respondents

ELP No.7 of 2021 & ELP (Filing) No.54183 of 2021

The Election Petition praying that this Hon'ble Court be pleased to (a) Declare the acceptance of Nomination of the 4th Respondent namely S.Udhayanithi Stalin to the No.19-Chepauk-Thiruvallikeni Assembly Constituency is not accordance with law and illegal and the result declared is null and void, and (b) Declare that the election held in No.19-Chepauk-Thiruvallikeni Assembly Constituency is of undue influence and not free and fair election.

OA.No.553 OF 2021

This Original Application praying that this Hon'ble Court be pleased to grant leave to withdraw the Election Petition, filing No.54183 of 2021 under Section 109 of the Representation of People Act, 1951.

OA.Nos.679 OF 2021 & 680 OF 2021

1. The Election Commission of India,
Nirvachan Sadan,
No.1, Ashoka Road,
New Delhi- 110 001.
2. The Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai - 600 009.

3. Returning Officer,
No-19, Chepauk Thiruvellickeni Assembly Constituency,
Chennai.

... Applicants herein/1st to 3rd Respondents

-Vs-

1. M.L.Ravi,
S/o. Lakshmipathy,
No.21/11, Venkataraman Street,
Chennai - 600 001. ... 1st Respondent /Petitioner
2. Udhayanithi Stalin. S,
S/o. M.K.Stalin,
No.25/9, Chitaranjan Road,
Cenetoph 2nd Street,
Chennai - 600 018.
3. Raghu. C,
S/o. Chinathambi,
No.45/53, Vannara Street,
Chennai - 600 002.
4. Abid Bakshq H Hussain,
S/o.Bakshi Ali,
No. 1, Syed Noor Street,
Anna Salai, Chennai - 600 002.
5. Rajendran. L,
S/o.Lakshmanan,
No. 10, Samipandaram Street,
Chintadripet, Chennai - 600 002.
6. Kassali. A.V.A,
S/o.Abdul Gani,
4/17, Muslim New Street,
Seydunganallur, Srivaigundam Taluk,
Thoothukudi - 628 809.
7. Tabrez,
S/o.Abbas Baksh,
No.14B, Buddi Begum Street,
Gopalapuram, Chennai - 600 086.
8. Mohammed Idris.K,
S/o. Kadar Mohideen,
No.I, A5, Block A, IInd floor Roohis Anja,
Panchayat Main Road, 1st Cross Street,
Perungudi, Chennai - 600 096.

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY 7

9. Mohamed Rioz,
S/o. Mohammed Rafi,
No. 1-1-374, Ward 1, Rasi Nagar,
Maramangalathupatti, Salem- 636 030.
10. Jayasimmaraja.S.M,
S/o. Muthumani,
No.C-1, Llyods Colony,
Royapettah, Chennai - 600 014.
11. Anandan. K,
S/o. Kannan,
No.5/2, Subramaniya Mudali Street,
Saidapet, Chennai - 600 015.
12. Kannan. C,
S/o.Chitravel,
No. 13, Gopalakrishnan Street,
Tiruvalluvar Nagar,
Adambakkam, Chennai - 600 088.
13. Ganesan. P,
S/o.Ponnusamy,
No.41, First Street,
Sathyavathi Nagar,
Padi, Chennai - 600 050.
14. Krishnadasan.S,
S/o. Sankaran Kutty,
No. 17, Vasantham Nagar,
Moolachatram,
Madhavaram Milk Depot,
Chennai - 600 051.
15. Chandranathan. S,
S/o.Sugumaran,
No. IE, New Balakrishnan Street,
Chindadripet, Chennai - 600 002.
16. Srinivasan,
S/o.Kuppusamy,
No. 8/22, Anna Street,
Nehru Nagar, Velacherry,
Chennai - 600 042.
17. Senthil Kumar.H,
S/o. Harikrishanan,
No.113, Ellaiyamman Koil Street,
Vannanthurai, Chennai - 600 020.

18. Dilliraj.P,
S/o.Paneerselvam,
No. 122, Peyandiamman Koil Street,
Mylapore, Chennai - 600 004.
19. Nagarajan,
S/o.Balakrishnan,
No.946, 3rd Street,
Brindavan Nagar, KTC Nagar,
Palayamkottai, Tirunelveli - 627 011.
20. Balaji.K,
S/o. Karunakaran,
No.42/1, Anna Street,
Thiruvanmiyur, Chennai-600 041.
21. Balaji.C,
S/o.Chalika Masthan,
No.54, Swathantra Nagar,
2nd Street, Lloyds Road,
Chennai - 600 005.
22. Manikandan.E,
S/o.Elankali,
No. 14/24, Arunachalapuram Main Road,
Adyar, Chennai - 600 020.
23. Madanagopal .T,
S/o. Thiyagarajan,
No.9/17, Manickam Street,
Choolai, Chennai - 600 112.
24. Mohammed Hussain,
S/o. Nizam Basha,
No.2, Munusamy Nagar,
Triplicane, Chennai - 600 005.
25. Muniyandi,
S/o. Subramanian,
No. 15, 12th Street, Abiramai Avenue,
Kaviarasu Kannadasan Nagar, Chennai - 600 118
26. Ravi.E,
S/o.Ettiyan,
No. 19/37, Ratnakutli Apartments,
T.P.Koil Street, Triplicane,
Chennai - 600 005.

... 2nd to 26th Respondents/
4th to 28th Respondents

OA.No.679 OF 2021:-

This Original Application praying that this Hon'ble Court be pleased to strike off the Applicants herein/1st to 3rd Respondents as Respondents in the above Election Petition No.7 of 2021.

O.A.No.680 OF 2021

This Original Application praying that this Hon'ble Court be pleased to permit the Applicants herein/1st to 3rd Respondents to release the Electronic Voting Machines used for the elections in No.19-Chepauk-Thiruvellickeni Assembly Constituency, Tamil Nadu, challenged in the above Election Petition No.7 of 2021 for use by the Election Commission of India.

O.A.No.38 OF 2022:-

Udhayanithi Stalin.S,
S/o.M.K.Stalin,
No.25/9,Chitranjan Road,
Cenetoph 2nd Street,
Chennai – 600 018.

...Applicant/4th Respondent

-VS-

1. M.L.Ravi,
S/o. Lakshmipathy,
No.21/11, Venkataraman Street,
Chennai - 600 001. *...1st Respondent/Petitioner*
2. The Election Commission of India,
Nirvachan Sadan,
No.1, Ashoka Road,
New Delhi – 110 001.
3. The Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai – 600 009.
4. Returning Officer,
No-19, Chepauk Thiruvellickeni Assembly Constituency,
Chennai.
5. Raghu. C, S/o. Chinathambi,
No.45/53, Vannara Street,
Chennai - 600 002.

6. Abid Bakshq H Hussain,
S/o.Bakshi Ali,
No.1, Syed Noor Street,
Anna Salai, Chennai - 600 002.
7. Rajendran. L,
S/o .Lakshmanan,
No. 10, Samipandaram Street,
Chintadripet, Chennai - 600 002.
8. Kassali. A.V.A,
S/o.Abdul Gani,
4/17, Muslim New Street,
Seydunganallur, Srivaigundam Taluk,
Thoothukudi - 628 809.
9. Tabrez,
S/o.Abbas Baksh,
No.14B, Buddi Begum Street,
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S/o. Muthumani,
No.C-1, Llyods Colony,
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Saidapet, Chennai - 600 015.
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S/o.Chitravel,
No. 13, Gopalakrishnan Street,
Tiruvalluvar Nagar,
Adambakkam, Chennai - 600 088.

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY 11

15. Ganesan. P,
S/o.Ponnusamy,
No.41, First Street,
Sathyavathi Nagar,
Padi, Chennai - 600 050.
16. Krishnadasan.S,
S/o.Sankaran Kutty,
No. 17, Vasantham Nagar,
Moolachatram,
Madhavaram Milk Depot,
Chennai - 600 051.
17. Chandranathan. S,
S/o.Sugumaran,
No. 1E, New Balakrishnan Street,
Chindadripet, Chennai - 600 002.
18. Srinivasan,
S/o.Kuppusamy,
No. 8/22, Anna Street,
Nehru Nagar, Velacherry,
Chennai - 600 042.
19. Senthil Kumar. H,
S/o.Harikrishnan,
No.113, Ellaiyamman Koil Street,
Vannanthurai, Chennai - 600 020.
20. Dilliraj.P,
S/o. Paneerselvam,
No. 122, Peyandiamman Koil Street,
Mylapore, Chennai - 600 004.
21. Nagarajan,
S/o. Balakrishnan,
No.946, 3rd Street,
Brindavan Nagar, KTC Nagar,
Palayamkottai, Tirunelveli - 627 011.
22. Balaji.K,
S/o. Karunakaran,
No.42/1, Anna Street,
Thiruvanmiyur, Chennai-600 041.
23. Balaji.C,
S/o.Chalika Masthan,
No.54, Swathantra Nagar,
2nd Street, Lloyds Road,
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Kaviarasu Kannadasan Nagar, Chennai - 600 118
 28. Ravi.E, S/o.Ettiyan,
No. 19/37, Ratnakutli Apartments,
T.P.Koil Street, Triplicane,
Chennai - 600 005.
- ...Respondents/
Respondents 1 to 3, 5 to 28

OA.No.38 OF 2022:-

This Original Application praying that this Hon'ble Court be pleased to reject EL.OP.No.7 of 2021.

The above Election Petitions and Original Applications having been heard on 15/02/2022 in the presence of Mr.T.Sivagnanasambandan, advocate for the Election Petitioner and for the 1st Respondent in O.A.Nos.679 & 680 of 2021 and OA.No.38 of 2022, and Mr.N.R.Elango, Senior Counsel for Mr.A.S.Aswin Prasanna, Advocate for the Applicant in OA.No.38 of 2022 and for the 4th Respondent in O.A.No.553 of 2021 and the Election Petitions, and for the 2nd Respondent in O.A.Nos.679 & 680 of 2021; and Mr. Niranjana Rajagopalan for M/s.G.R. Associates advocate for the Applicants in OA.Nos.679 & 680 of 2021 and for the Respondents 1 to 3 in Election Petitions and for the Respondents 2 to 4 in O.A.No.38 of 2022; and upon reading the Petitions, Affidavit, Judge's Summon, Affidavit of M.L.Ravi filed in ELP.No.7 of 2021 & ELP.(Filing) No.54183 of 2021 and O.A.No.553 of 2021, Judge's Summons, Affidavits of V.Sridhar filed in O.A.Nos.679 & 680 of 2021, Judge's Summon, Affidavit of Udhayanithi Stalin filed in O.A.No.38 of 2022 and Counter Affidavit filed in ELP.No.7 of 2021 and this court having stood over for consideration till this day and coming on this day before this court for orders in the presence of the above said advocates and this court having observed that for non compliance of provisions of Section 117 of the RP Act and Rule 8 of the Rules of Madras High Court Election Petitions, 1967, ELP (Filing) No.54183 of 2021, is liable only to be rejected in limine, and therefore, petitioner cannot be permitted to

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY 13

withdraw the election petition in view of sub-section (2) of Section 110 of the RP Act and this court is of the view that, the election petitioner is barred from filing second election petition (ELP No.7 of 2021) under Section 11 of CPC, and the principles of *res judicata* squarely applies to second Election petition, and

It is ordered as follows:-

1. That the Election Petition (Filing) No.54183 of 2021 and Original Application No.553 of 2021 be and are hereby dismissed.

2. That the Election Petition No.7 of 2021 be and is hereby rejected.

3. That the ***Original Application No.679 of 2021*** in ELP.No.7 of 2021 be and *** is*** hereby closed.

***4. That the Election Commission of India be and is hereby permitted to release the EVMs used in the said Election. ***

***5*. That both parties be and are hereby directed to bear their respective costs.**

Order portion amended as per order of this Hon'ble Court dated 10/03/2022 made in O.A.No.680 of 2021 in ELP.No.7 of 2021.

SD./-
ASSISTANT REGISTRAR
Original Side – II

WITNESS, THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI,
CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 25TH DAY
OF FEBRUARY 2022.

SD./-
ASSISTANT REGISTRAR
Original Side – II

//Certified to be true copy//
Dated at Madras this the 16th day of March 2022.

COURT OFFICER (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KG

04/03/2022

ELP.NO.7 OF 2021 ELP (FILING)
NO.54183 OF 2021 OA.NOs.553, 679,
680 OF 2021 & OA.NO.38 OF 2022

ORDER
DATED: 25.02.2022

AMENDED DECREE
DATED : 10.03.2022

THE HON'BLE MR. JUSTICE
V. BHARATHIDASAN

FOR APPROVAL: 08/03/2022

APPROVED ON: 08/03/2022

Copy to:-

1. The Chief Electoral Officer,
Public (Elections) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Election Commission of
India, Nirvachan Sadan,
Ashoka Road, New Delhi.
3. The Returning Officer,
No. 19, Chepauk-Thirvelliken
Assembly Constituency, Chennai.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)
FRIDAY, THE 25TH DAY OF FEBRUARY 2022
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Election Petition No.7 of 2021
& Election Petition (Filing) No. 54183 of 2021
and
O.A.Nos. 553, 679, 680 of 2021 & 38 of 2022

ELP No.7 of 2021 & ELP (Filing) No. 54183 of 2021
& OA.No. 553 OF 2021

M.L.Ravi,
S/o. Lakshmipathy,
No.21/11, Venkataraman Street,
Chennai - 600 001.

...Petitioner

-Vs-

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Public (Elections) Department,
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S/o. Kannan,
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Saidapet, Chennai - 600 015.
14. Kannan. C,
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Adambakkam, Chennai - 600 088.

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY 17

15. Ganesan. P,
S/o.Ponnusamy,
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16. Krishnadasan.S,
S/o.Sankaran Kutty,
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S/o.Harikrishnan,
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 25. Madanagopal .T,
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 26. Mohammed Hussain,
S/o. Nizam Basha,
No.2, Munusamy Nagar,
Triplicane, Chennai - 600 005.
 27. Muniyandi,
S/o. Subramanian,
No. 15, 12th Street, Abiramai Avenue,
Kaviarasu Kannadasan Nagar, Chennai - 600 118
 28. Ravi.E,
S/o.Ettiyan,
No. 19/37, Ratnakutli Apartments,
T.P.Koil Street, Triplicane,
Chennai - 600 005.
- Respondents/

ELP No.7 of 2021 & ELP (Filing) No.54183 of 2021

The Election Petition praying that this Hon'ble Court be pleased to (a) Declare the acceptance of Nomination of the 4th Respondent namely S.Udhayanithi Stalin to the No.19-Chepauk-Thiruvallikeni Assembly Constituency is not accordance with law and illegal and the result declared is null and void, and (b) Declare that the election held in No.19-Chepauk- Thiruvallikeni Assembly Constituency is of undue influence and not free and fair election.

OA.No.553 OF 2021

This Original Application praying that this Hon'ble Court be pleased to grant leave to withdraw the Election Petition, filing No.54183 of 2021 under Section 109 of the Representation of People Act, 1951.

OA.Nos.679 OF 2021 & 680 OF 2021

1. The Election Commission of India,
Nirvachan Sadan,
No.1, Ashoka Road,
New Delhi- 110 001.
2. The Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai - 600 009.

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3. Returning Officer,
No-19, Chepauk Thiruvellickeni Assembly Constituency,
Chennai.

... Applicants herein /1st to 3rd Respondents

-Vs-

1. M.L.Ravi,
S/o. Lakshmipathy,
No.21/11, Venkataraman Street,
Chennai - 600 001. *... 1st Respondent /Petitioner*
2. Udhayanithi Stalin. S,
S/o. M.K.Stalin,
No.25/9, Chitaranjan Road,
Cenetoph 2nd Street,
Chennai - 600 018.
3. Raghu. C,
S/o. Chinathambi,
No.45/53, Vannara Street,
Chennai - 600 002.
4. Abid Bakshq H Hussain,
S/o.Bakshi Ali,
No.1, Syed Noor Street,
Anna Salai, Chennai - 600 002.
5. Rajendran. L,
S/o.Lakshmanan,
No. 10, Samipandaram Street,
Chintadripet, Chennai - 600 002.
6. Kassali. A.V.A,
S/o.Abdul Gani,
4/17, Muslim New Street,
Seydunganallur, Srivaigundam Taluk,
Thoothukudi - 628 809.
7. Tabrez,
S/o.Abbas Baksh,
No.14B, Buddi Begum Street,
Gopalapuram, Chennai - 600 086.
8. Mohammed Idris.K,
S/o. Kadar Mohideen,
No.1, A5, Block A, IInd floor Roohis Anja,
Panchayat Main Road, 1st Cross Street,
Perungudi, Chennai - 600 096.

9. Mohamed Rioz,
S/o. Mohammed Rafi,
No. 1-1-374, Ward 1, Rasi Nagar,
Maramangalathupatti, Salem- 636 030.
10. Jayasimmaraja.S.M,
S/o. Muthumani,
No.C-1, Llyods Colony,
Royapettah, Chennai - 600 014.
11. Anandan. K,
S/o. Kannan,
No.5/2, Subramaniya Mudali Street,
Saidapet, Chennai - 600 015.
12. Kannan. C,
S/o.Chitravel,
No. 13, Gopalakrishnan Street,
Tiruvalluvar Nagar,
Adambakkam, Chennai - 600 088.
13. Ganesan. P,
S/o.Ponnusamy,
No.41, First Street,
Sathyavathi Nagar,
Padi, Chennai - 600 050.
14. Krishnadasan.S,
S/o. Sankaran Kutty,
No. 17, Vasantham Nagar,
Moolachatram,
Madhavaram Milk Depot,
Chennai - 600 051.
15. Chandranathan. S,
S/o.Sugumaran,
No. 1E, New Balakrishnan Street,
Chindadiripet, Chennai - 600 002.
16. Srinivasan,
S/o.Kuppusamy,
No. 8/22, Anna Street,
Nehru Nagar, Velacherry,
Chennai - 600 042.
17. Senthil Kumar.H,
S/o. Harikrishanan,
No.113, Ellaiyamma Koil Street,
Vannanthurai, Chennai - 600 020.

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18. Dilliraj.P,
S/o.Paneerselvam,
No. 122, Peyandiamman Koil Street,
Mylapore, Chennai - 600 004.
 19. Nagarajan,
S/o.Balakrishnan,
No.946, 3rd Street,
Brindavan Nagar, KTC Nagar,
Palayamkottai, Tirunelveli - 627 011.
 20. Balaji.K,
S/o. Karunakaran,
No.42/1, Anna Street,
Thiruvanmiyur, Chennai-600 041.
 21. Balaji.C,
S/o.Chalika Masthan,
No.54, Swathantra Nagar,
2nd Street, Lloyds Road,
Chennai - 600 005.
 22. Manikandan.E,
S/o.Elankali,
No. 14/24, Arunachalapuram Main Road,
Adyar, Chennai - 600 020.
 23. Madanagopal .T,
S/o. Thiyagarajan,
No.9/17, Manickam Street,
Choolai, Chennai - 600 112.
 24. Mohammed Hussain,
S/o. Nizam Basha,
No.2, Munusamy Nagar,
Triplicane, Chennai - 600 005.
 25. Muniyandi,
S/o. Subramanian,
No. 15, 12th Street, Abiramai Avenue,
Kaviarasu Kannadasan Nagar, Chennai - 600 118
 26. Ravi.E,
S/o.Ettiyan,
No. 19/37, Ratnakutli Apartments,
T.P.Koil Street, Triplicane,
Chennai - 600 005.
- ... 2nd to 26th Respondents/
4th to 28th Respondents

OA.No.679 OF 2021:-

This Original Application praying that this Hon'ble Court be pleased to strike off the Applicants herein/1st to 3rd Respondents as Respondents in the above Election Petition No.7 of 2021.

O.A.No.680 OF 2021:-

This Original Application praying that this Hon'ble Court be pleased to permit the Applicants herein/1st to 3rd Respondents to release the Electronic Voting Machines used for the elections in No.19-Chepauk-Thiruvellikeni Assembly Constituency, Tamil Nadu, challenged in the above Election Petition No.7 of 2021 for use by the Election Commission of India.

O.A.No.38 OF 2022:-

Udhayanithi Stalin, S,
S/o. M.K. Stalin,
No.25/9, Chitaranjan Road,
Cenetoph 2nd Street,
Chennai – 600 018.

...Applicant/4th Respondent

-VS-

1. M.L.Ravi,
S/o. Lakshmipathy,
No.21/11, Venkataraman Street,
Chennai - 600 001. *...1st Respondent/Petitioner*
2. The Election Commission of India,
Nirvachan Sadan,
No.1, Ashoka Road,
New Delhi – 110 001.
3. The Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai – 600 009.
4. Returning Officer,
No-19, Chepauk Thiruvellikeni Assembly Constituency,
Chennai.
5. Raghu. C, S/o. Chinathambi,
No.45/53, Vannara Street,
Chennai - 600 002.
6. Abid Bakshq H Hussain,
S/o. Bakshi Ali,
No.1, Syed Noor Street,
Anna Salai, Chennai - 600 002.

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7. Rajendran. L,
S/o .Lakshmanan,
No. 10, Samipandaram Street,
Chintadripet, Chennai - 600 002.
8. Kassali. A.V.A,
S/o.Abdul Gani,
4/17, Muslim New Street,
Seydunganallur, Srivaigundam Taluk,
Thoothukudi - 628 809.
9. Tabrez,
S/o.Abbas Baksh,
No.14B, Buddi begum Street,
Gopalapuram, Chennai - 600 086.
10. Mohammed Idris.K,
S/o. Kadar Mohideen,
No.1, A5, Block A, IInd floor Roohis Anja,
Panchayat Main Road, 1st Cross Street,
Perungudi, Chennai - 600 096.
11. Mohamed Rioz,
S/o. Mohammed Rafi,
No. 1-1-374, Ward 1, Rasi Nagar,
Maramangalathupatti, Salem- 636 030.
12. Jayasimmaraja.S.M,
S/o. Muthumani,
No.C-1, Llyods Colony,
Royapettah, Chennai - 600 014.
13. Anandan. K, S/o. Kannan,
No.5/2, Subramaniya Mudali Street,
Saidapet, Chennai - 600 015.
14. Kannan. C,
S/o.Chitravel,
No. 13, Gopalakrishnan Street,
Tiruvalluvar Nagar,
Adambakkam, Chennai - 600 088.
15. Ganesan. P,
S/o.Ponnusamy,
No.41, First Street,
Sathyavathi Nagar,
Padi, Chennai - 600 050.

16. Krishnadasan.S,
S/o.Sankaran Kutty,
No. 17, Vasantham Nagar,
Moolachatram,
Madhavaram Milk Depot,
Chennai - 600 051.
17. Chandranathan. S,
S/o.Sugumaran,
No. 1E, New Balakrishnan Street,
Chindadiripet, Chennai - 600 002.
18. Srinivasan,
S/o.Kuppusamy,
No. 8/22, Anna Street,
Nehru Nagar, Velacherry,
Chennai - 600 042.
19. Senthil Kumar. H,
S/o.Harikrishnan,
No. 113, Ellaiyamman Koil Street,
Vannanthurai, Chennai - 600 020.
20. Dilliraj. P,
S/o. Paneerselvam,
No. 122, Peyandiamman Koil Street,
Mylapore, Chennai - 600 004.
21. Nagarajan,
S/o. Balakrishnan,
No.946, 3rd Street,
Brindavan Nagar, KTC Nagar,
Palayamkottai, Tirunelveli - 627 011.
22. Balaji.K,
S/o. Karunakaran,
No.42/1, Anna Street,
Thiruvanmiyur, Chennai-600 041.
23. Balaji.C,
S/o.Chalika Masthan,
No.54, Swathantra Nagar,
2nd Street, Lloyds Road,
Chennai - 600 005.
24. Manikandan.E,
S/o.Elankali,
No. 14/24, Arunachalapuram Main Road,
Adyar, Chennai - 600 020.

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25. Madanagopal .T,
S/o .Thiyagarajan,
No.9/17, Manickam Street,
Choolai, Chennai - 600 112.
26. Mohammed Hussain,
S/o. Nizam Basha,
No.2, Munusamy Nagar,
Triplicane, Chennai - 600 005.
27. Muniyandi, S/o. Subramanian,
No. 15, 12th Street, Abiramai Avenue,
Kaviarasu Kannadasan Nagar, Chennai - 600 118
28. Ravi.E, S/o.Ettiyan,
No. 19/37, Ratnakutli Apartments,
T.P.Koil Street, Triplicane,
Chennai - 600 005.
- ...Respondents*
Respondents 1 to 3, 5 to 28

OA.No.38 OF 2022:-

This Original Application praying that this Hon'ble Court be pleased to reject EL.OP.No.7 of 2021.

The above Election Petitions and Original Applications having been heard on 15/02/2022 in the presence of Mr.T.Sivagnanasambandan, advocate for the Election Petitioner and for the 1st Respondent in O.A.Nos.679 & 680 of 2021 and OA.No.38 of 2022, and Mr.N.R.Elango, Senior Counsel for Mr.A.S.Aswin Prasanna, Advocate for the Applicant in OA.No.38 of 2022 and for the 4th Respondent in O.A.No.553 of 2021 and the Election Petitions, and for the 2nd Respondent in O.A.Nos.679 & 680 of 2021; and Mr.Niranjana Rajagopalan for M/s.G.R.Associates advocate for the Applicants in OA.Nos.679 & 680 of 2021 and for the Respondents 1 to 3 in Election Petitions and for the Respondents 2 to 4 in O.A.No.38 of 2022; and upon reading the Petitions, Affidavit, Judge's Summon, Affidavit of M.L.Ravi filed in ELP.No.7 of 2021 & ELP.(Filing) No.54183 of 2021 and O.A.No.553 of 2021, Judge's Summons, Affidavits of V.Sridhar filed in O.A.Nos.679 & 680 of 2021, Judge's Summon, Affidavit of Udhayanithi Stalin filed in O.A.No.38 of 2022 and Counter Affidavit filed in ELP. No.7 of 2021 and this court having stood over for consideration till this day and coming on this day before this court for orders in the presence of the above said advocates and

the court made the following order:-

Originally, M.L.Ravi, petitioner in both the Elections Petitions, has filed a Election Petition in E.L.P. (Filing) No.54183 of 2021, however, without depositing a sum of rupees two thousand as security for the cost of the Petition as mandated under Section 117 of The Representation of People Act, 1951 r/w Rule 8 of the Rules of Madras High Court Election Petitions, 1967. Pending that petition in ELP (Filing) No.54183 of 2021, the very same petitioner filed another Election Petition duly complying with all mandatory requirements, which has been numbered as

ELP No.7 of 2021. Both the Election Petitions have been filed seeking to declare (i) that the acceptance of the nomination of the 4th respondent- S.Udhayanithi Stalin to No. 19, Chepauk - Tiruvallikeni Assembly Constituency is illegal and not in accordance with law and the result declared is null and void; (i) and declare that the election held for No. 19, Chepauk - Tiruvallikeni Assembly Constituency is of undue influence and not free and fair election.

2. For the convenience of the disposal of these matters, the parties in all the above Petitions will be referred as per their array in the Election Petitions.

3. The facts leading to the filing of the petitions challenging the elections in brief are as under: -

(i) The petitioner belongs to one Desiya Makkal Sakthi Katchi, a registered political party. He was nominated from the party to contest the Tamil Nadu Legislative Assembly Constituencies Election, 2021, from Chepauk - Tiruvallikeni Constituency, while the 4th respondent was nominated from Dravida Munnetra Kazagam (DMK). The polling of votes was held on 06.04.2021. The results of the election were declared on 02.05.2021 and the 4th respondent was declared as returned candidate from that Constituency.

(ii) The election of the 4th respondent has been challenged inter alia alleging that, in the affidavit in Form 26, filed along with the nomination, the 4th respondent furnished false, incorrect and improper particulars. Under Column No.5 (ii) of the affidavit though the petitioner has stated as if his criminal case details are furnished in Annexure-I (containing 5 pages), in the same affidavit at subsequent columns for other crime details, the petitioner stated as "Nil", which is a contradictory statement. There are 22 criminal cases are pending against the petitioner under different penal provisions. Despite objections made by the petitioner in this regard at the time of verification of nominations, the Returning Officer, accepted the nomination of the 4th respondent. Thereafter, the polling was conduct and the 4th respondent was declared as returned candidate. Hence, the petitions challenging the election of the 4th respondent seeking for the above said declaratory reliefs have been filed.

(iii) In the first Election Petition in E.L.P.(Filing)No.54183 of 2021, the petitioner failed to deposit in cash a sum of rupees two thousand towards security for the costs of the petition, as mandated under Section 117 of the Representation of People Act, 1951 r/w Rule 8 of Rules of The Madras High Court Election Petitions, 1967, before filing the petition challenging the election and the petition was not presented before the II Assistant Registrar, Original Side, High Court as required under Rule 7 of the Rules of The Madras High Court Election Petitions, 1967. Therefore, the petition was ordered to be listed before the court for "maintainability". In the mean time, the petitioner filed another Election petition on the very same grounds raised in the earlier petition and for the similar relief, however, duly complying with the mandatory provisions. This petition has been numbered as E.L.P.No.7 of 2021 and listed before this court for admission. Accordingly, this ELP was listed for hearing along with the ELP (Filing) No.54183 of 2021.

(iv) Subsequently, the petitioner has filed an application in OA No.553 of 2021, seeking leave to withdraw the Election Petition (Filing) No.54183 of 2021. Thereafter, the respondents 1 to 3 in the ELP have filed two separate applications

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one in OA No.679 of 2021 seeking, to strike off their names from the Election Petition in E.L.P.No.7 of 2021 and the other in O.A.No.680 of 2021 seeking to permit them release the Electronic Voting Machines used for the elections in the Constituency, for the use by the Election Commission of India. Lastly, the 4th respondent has come up with an application in OA No.38 of 2022, seeking to reject the Election petition in E.L.P.No.7 of 2021. Now all the above petitions are taken up for hearing, however, for the sake of convenience of disposal of these matters, let this court take up the Election Petition (Filing) no.54183 of 2021, first.

ELP (Filing) No.54183 of 2021:

4. This petition has been listed for hearing to decide the maintainability of the petition, on the ground that the petitioner did not pay the security for the cost of the petition under Section 117 of the Representation of People Act, 1951 and Rule 8 of the Rules of Madras High Court Election Petitions, 1967, and the petition was not presented as per Rule 7, of the Rules of Madras High Court Election Petitions, 1967.

5. Before considering the legal issue involved in this matter, it would be useful to refer to the various provisions of The Representation of People Act, 1951 (in short, "the RP Act") relevant to this issue.

6. Sub-section (1) of Section 117 of the RP Act, requires that, at the time of presenting the election petition, the petitioner shall deposit in the High Court a sum of two thousand rupees as security for the costs of the petition. Section 117 of the RP Act is extracted hereunder:-

"117. Security for costs.—(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition. (2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct."

7. Section 86 of the RP Act, deals with trial of election petitions. The relevant portion is extracted hereunder:-

"86. Trial of election petitions.- The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98".

8. Under the above provisions, if the election petition does not comply with the provisions of Section 81 or 82 or 117 of the RP Act, the High Court shall dismiss the election petition at its threshold. As per the explanation to sub-section (1) of

Section 86 of the RP Act, any such order dismissing the election petition under sub-section (1) of Section 86 of the RP Act, shall be deemed to be an order made under Clause (a) of Section 98 of the RP Act.

9. Section 98 of the RP Act, deals with the decision of the High court in the Election Petitions which is extracted hereunder:-

“98. Decision of the High Court.—

At the conclusion of the trial of an election petition the High Court shall make an order —

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.”

10. As per Section 98 of the RP Act, at the conclusion of the trial of an election petition, the High Court shall make an order either dismissing the election petition or declaring the election of all or any of the returned candidates to be void or declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected. In effect, if an election petition is dismissed under sub-section (1) of Section 86 of the RP Act, it shall have the effect of dismissal of the election petition after the conclusion of trial and the order is final.

11. Mr.N.R.Elango, the learned senior counsel appearing for the 4th respondent would submit that under sub-section (1) of Section 86 of the RP Act, election petition in ELP Filing No.54183 of 2021 is liable to be rejected in limine for non compliance of the mandatory provisions contained in Section 117 of the RP Act and Rule 8 of the Rules of Madras High Court Election Petitions, 1967, and in the event of order being passed by this court dismissing the ELP Filing 54183 of 2021, it shall be deemed to be an order passed under clause (a) of Section 98 of the RP Act. In other words, the earlier petition in ELP (Filing) No.54183 of 2021, reached its finality and as such second petition on the very same cause of action is barred by the principles of **res judicata** under Section 11 of CPC and the same is thus liable to be rejected under Order VII, Rule 11 of CPC.

12. Mr.T.Sivagnanasambandan, the learned counsel appearing for the Election Petitioner would on the other hand contend that due to COVID19 pandemic, the entry of litigants and the Advocates ' into the High Court premises was strictly prohibited at the relevant point of time, and the petitioner was not in a position to deposit cash of rupees two thousand as contemplated under Section Rule 8 of Rules of Madras High Court Election Petitions, 1967, and non compliance of mandatory requirement of deposit of cash was not willful nor wanton, but due to the bona fide reasons. In such circumstances, the petitioner filed another Election petition challenging the election and also filed an application seeking permission to withdraw the earlier unnumbered ELP.

13. The learned counsel appearing for the Election Petitioner and the learned senior counsel appearing for the 4th respondent relied upon various judgments in support of their respective contentions about which reference would be made in the subsequent part of this order.

14. I have considered the rival submissions and also perused the available materials carefully.

15. The Honourable Supreme Court in **Charan Lal Sahu [(1973) 2 SCC 530]** has clearly held that in the event of election petition does not comply with the provision of Section 117 of the RP Act, the court has no option except to reject the election petition. The relevant portions of the judgment are extracted hereunder:-

“5. The argument of the appellant’s advocate that in view of the marginal note to Section 86 election petition can only be dismissed after the trial has commenced by the issue of a notice to the respondent is equally without sub-stance. Amended Section 86 apart from sub-section (1) provides for several matters in subsections (2) to (7) such as for reference of the election petition or election petitions, where there is more than one in respect of the same election, to a Judge, the ordering of security for costs in case of the application by a candidate who is not already a respondent being made a respondent, the permission to amend or amplify particulars of any corrupt practice alleged in the petition, the continuance of the trial of the election petition from day to day and its expeditious trial to be concluded as far as possible within six months from the presentation of the petition to the High Court. The reference to trial is in a larger sense and deals with the steps in a trial, rather than in a narrower sense of a trial commencing after the notice of the petition is directed, to be served on the respondent. The marginal note of Section 86, namely, “Trial of Election Petitions” does not indicate that under sub-section (1) of Section 86 an election petition cannot be dismissed for non-compliance with the provisions set out therein, unless notice is issued to the respondent. Where the language is clear and can admit of no other meaning such as is evident from sub-section (1) of Section 86, the marginal note cannot be read to control that power.

6. We are clearly of the view that the non-deposit of the security along with election petition as required under Section 117 of the Act leaves no option to the court but to reject it. The appeal is accordingly dismissed with costs.”

16. The above decision was followed by the Honourable Supreme Court in **Aeltemesh Rein v. Chandulal Chandrakar**, (1981) 2 SCC 689. The relevant portions of the judgment are extracted hereunder:-

"2. It is urged by the appellant who appeared in person before us that Sections 86 and 117 of the Representation of the People Act, 1951 are ultra vires Article 329(b) of the Constitution and, therefore, the High Court was in error in dismissing the election petition for the reason that the provisions of Section 117 were not complied with. We see no substance in this contention. Article 329(b) of the Constitution provides, insofar as material, that no election to either House of Parliament shall be called in question except by an election petition "presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. It is in pursuance of this provision that the Parliament provided by Section 117 of the Act that at the time of presenting an election petition, the petitioner shall deposit in the High Court, in accordance with the rules of the High Court, a sum of Rs 2000 as security for the costs of the respondent. We are unable to accept the petitioner's argument that the words "in such manner" which occur in Article 329(b) are limited, in their operation to procedural and not substantive requirements. The Constitution, by the aforesaid clause, has conferred authority on the appropriate legislature to pass a law providing for the authority to which the election petition may be presented and the manner of providing it. The provision of law which prescribes that an election petition shall be accompanied by the payment of security amount pertains to the area covered by the manner of the making of the election petition and is, therefore, within the authority of the Parliament.

3. The only question which survives is as to what is the consequence of non-compliance with Section 117 of the Act. That question has been settled by the decision of this Court in Charan Lal Sahu v. Nandkishore Bhatt [(1973) 2 SCC 530 : AIR 1973 SC 2464 : (1974) 1 SCR 294] wherein it was held that the High Court has no option but to reject an election petition which is not accompanied by the payment of security amount as provided in Section 117 of the Act. Section 86(1) of the Act provides that the High Court shall dismiss an election petition which does not comply

with the provisions of Section 81, 82 or 117. In that view of the matter, the High Court was right in dismissing the election petition summarily.

17. In **M. Karunanidhi v. H.V. Hande, (1983) 2 SCC 473**, the Honourable Supreme Court has held that the requirement regarding the making of a security deposit of Rs 2000 in the High Court is mandatory, the non-compliance of which must entail dismissal in limine of the election petition under sub-section (1) of Section 86 of the Act. The Honourable Supreme Court has, however, held that the mode of deposit of the security amount is directory. **Similar view** has been taken in **M. Y. Ghorpade v. Shivaji Rao M. Poal, (2002) 7 SCC 289**.

18. Coming to the case in hand, Rule 8 of the Rules of Madras High Court Election Petitions, 1967, mandates that an election petitioner before presenting his election petition shall deposit in the High Court in cash a sum of two thousand rupees towards security for the costs as provided under Section 117 of the RP Act, and shall produce the receipt of the same to the Registrar at the time of presentation of the petition. Though the requirement under Section 117 of the RP Act, regarding making of a deposit of cash towards security is mandatory, the mode of deposit in the High Court in accordance with the rules of the High Court is directory, as held by the Honourable Supreme Court in **M. Karunanidhi v. H. V. Hande, (1983) 2 SCC 473**. Admittedly, the petitioner did not pay the security amount for the cost as mandated under sub-section (1) of Section 117 of the RP Act r/w Rule 8 of the Rules of Madras High Court Election Petitions, 1967 nor by any other mode. In such circumstances, Court has no other option than dismissing this election petition, and it is liable only to be rejected in limine for non compliance of the mandatory requirements. So far as the submission of the learned counsel for petitioner, regarding the reasons for non payment, it is to be noted that, within a period of one week after the presentation of the this Election Petition, the petitioner filed another Election Petition duly complying with all the mandatory requirements which was numbered accordingly. Thus, the reason assigned by the petitioner for non compliance of making deposit of cash towards security cannot be accepted. That apart, the court has no power to condone the above requirement.

Original Application No.553 of 2021:

19. This Application has been filed by the Election Petitioner under Section 109 of RP Act, seeking leave to withdraw the Election Petition (Filing) No.54183 of 2021, on the ground that, subsequently the petitioner moved another ELP duly complying with all the statutory and mandatory provisions and the same was numbered as ELP No.7 of 2021, hence, this Election Petition may be permitted to withdrawn.

20. The relevant portions of the affidavit filed in support of the Original Application are extracted hereunder for reference:

"11. I state that therefore subsequently complying all the statutory requirements like appearing before the Dy. Registrar, who had come to the Counter and made arrangements for the accounts section to receive the receipt the Security

Deposit of Rs. 2000/-, then filed another petition and the same was numbered by the Registry as ELP No. 7 of 2021.

12. I state that as the Election Petition Filing No. 54183 of 2021 filed and placed before the Lordship on Maintainability as not complied with the statutory payment of security deposit of Rs.2000/- under Section 117 of the Representation of People Act. As the mandatory of security of cost was not paid along with the petition and subsequent Election Petition for the same constituency was filed by the petitioner and numbered, the Election Petition filing No.(SR) 54183 of 2021 may be allowed to withdraw under Section 109 of the Representation of People Act, 1951, since the non-payment of Security Cost u/s 117 of R.P. Act, is not wanton or lack of money or of any other reason except due to the Corona pandemic and lock down situation and non-assessable of Registry and Accounts Section. "

21. Sections 108 to 116 of the RP Act, fall under Chapter IV of the RP Act, deal with the withdrawal and abatement of election petitions of which Section 109 deals with the withdrawal of election petitions and Section 110 deals with the procedure for withdrawal of election petitions.

22. Section 109 of the RP Act is extracted hereunder:-

"109. Withdrawal of election petitions. - (1)

An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under sub-section (1) notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette. "

23. Section 110 of the RP Act is extracted hereunder:

"110. Procedure for withdrawal of election petitions.—(1) *If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.*

(2) No application for withdrawal shall be granted if in the opinion of the High Court, such

application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted.—

(a) the petitioner shall be ordered to pay the costs of the respondents theretofore incurred or such portion thereof as the High Court may think fit;

(b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;

(c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit. ”

24. As per sub-section (2) of Section 110 of the RP Act, the High Court shall refuse to permit the petitioner to withdraw the election petition, if, in the opinion of the Court, such application has been induced by any bargain or consideration which ought not to be allowed. In view of provisions contained in Sections 109 and 110 of the RP Act, regulating withdrawal of election petitions, provision in Order XXIII, Rule 1 of Code of Civil Procedure, 1908, cannot be applied for withdrawal of election petition, hence the petitioner cannot claim any absolute right to withdraw the election petition and it is subject to Section 110 of the Act.

25. In *Bijayananda Patnaik v. Satrugma Sahu*, AIR 1963 SC 1566, the Honourable Supreme Court has held as under:-

“5. It will be seen from these provisions in Chapter IV that the petitioner in an election petition has not an absolute right to withdraw it; nor has the respondent the absolute right to withdraw from opposing the petition in certain circumstances. The basis for this special provision as to withdrawal of election petitions is to be found in the well-established principle that an election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public of the constituency also is substantially interested in it, as an election is an essential part of the democratic process. That is why provision is made in election law circumscribing the right of the parties thereto to

withdraw. Another reason for such provision is that the citizens at large have an interest in seeing and they are justified in insisting that all elections are fair and free and not vitiated by corrupt or illegal practices: That is why provision is made for substituting any elector who might have filed the petition in order to preserve the purity of elections : (see *Kamaraja Nadar v. Kunju Thevar* [(1959) SCR 583]). At the same time, though these principles are the basis of the provisions to be found in Chapter IV of the Act, it is equally clear that but for these provisions it may have been possible for a petitioner to withdraw the election petition absolutely."

26. In the above said circumstances, as already held, for non compliance of provisions of Section 117 of the RP Act and Rule 8 of the Rules of Madras High Court Election Petitions, 1967, ELP (Filing) No.54183 of 2021, is liable only to be rejected in limine. Therefore, petitioner cannot be permitted to withdraw the election petition in view of sub-section (2) of Section 110 of the RP Act. Accordingly, OA No. 553 of 2021, deserves only to be dismissed.

Original Application No. 38 of 2022:

27. This Original Application has been filed by the 4th respondent in the Election Petition (Returned Candidate) under Order VII, Rule 11 of CPC, seeking rejection of election petition in E.L.P.No.7 of 2021.

28. Even though various grounds have been raised seeking rejection of Election Petition, the learned senior counsel Mr.N.R.Elango, appearing for the 4th respondent would submit that, the petitioner already filed a Election Petition in ELP Filing No.54183 of 2021, which is posted for maintainability before this court, and the Petitioner cannot maintain second Election Petition on the very same cause of action. In the event of the earlier election petition being rejected by this court, that decision would operate as *res judicata*, for the second election petition in ELP No. 7 of 2021.

29. The learned counsel appearing for the election petitioner would vehemently oppose the application contending that even if the earlier election petition is rejected by this court, such rejection will not be on merits and the rejection will be only for technical reason that, the security for the cost of the election petition was not deposited by the election petitioner and therefore, that order would not operate as *res judicata* for the subsequent election petition as the earlier petition is not heard and decided finally. Therefore, according to the learned counsel, the subsequent ELP No. 7 of 2021, is very well maintainable on facts and in law.

30. Admittedly, Election Petition in ELP No. 7 of 2021, has been filed by the very same petitioner on the very same cause of action pleaded in the earlier ELP. On a cursory perusal of the averments made in the ELPs, this court finds that the averment made in the subsequent election petition are verbatim reproduction of the earlier ELP. Now, this court has rejected the earlier ELP for non compliance of provision of Section 117 of the Representation of People Act r/w Rule 8 of Rules of The Madras High Court Election Petitions, 1967. Now the question is whether that order bars the present E.P. on the principle of *res judicata*.

31. Before going into the issue, it would be appropriate to extract the relevant provisions of the Representation of People Act, 1951, and Code of Civil Procedure, 1908.

32. Under Section 87 of the RP Act, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 which reads as under:-

“87. Procedure before the High Court.— (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1972), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

Thus the provisions of CPC is applicable to the trial of Election Petition, subject to the provision of this Act.

33. Section 98 of the RP Act, speaks about the decision of the High Court at the conclusion of the trial of an election petition, which already extracted in the earlier part of this order. Section 86 of the RP Act deals with the trial of election petition, which was also extracted already.

34. Section 11 of CPC, deals with the principles of res judicata, which reads thus:-

“11. Res Judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they are any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and

has been heard and finally decided by such Court.”

35. As already held under sub-section (1) of Section 86 of the RP Act, the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or 82 or 117 of the RP Act. Any such order dismissing the election petition shall be deemed to be an order made under clause (a) of Section 98 of the RP Act. A conjoint reading of all the above provisions thus makes it clear that when an election petition has been rejected for non compliance of the provision of Section 117 of the RP Act, such rejection will have the effect of dismissal of the election petition after trial and it reached finality.

36. The Honourable Supreme Court in **Dipak Chandra Ruhidas v. Chandan Kumar Sarkar, (2003) 7 SCC 66** has held as under:-

“16. Furthermore, the Representation of the People Act provides for a complete machinery. The right of appeal conferred upon a suitor must be considered from that angle. When an order is passed under Section 98 of the Act, the same may be in terms of either sub-section (1) of Section 86 or otherwise. An appeal lies against a final order. An order passed under sub-section (1) of Section 86 is also final. It may be that in the event an appeal therefrom is allowed, the matter may be required to be sent back but that would not render an order passed thereunder as an interlocutory one. It does not take away the concept of the finality attached therewith.”

37. In this back drop, now, the question that crops up for consideration is as to whether the order rejecting the earlier ELP will bar- die petitioner from maintaining the subsequent ELP and subsequent petition is hit by principles of res judicata.

38. Section 11 of CPC specially bars the court to try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties and has been heard and finally decided by such Court. Now, this court has rejected the earlier ELP for non compliance of provision of Section 117 of the Representation of People Act, and the order passed in the former ELP is deemed to be a final order passed after trial and it reached finality. The issue in this ELP is directly and substantially an issue in the earlier ELP. The explanation to sub-section (1) of Section 86 of the RP Act, has been provided with a specific purpose to prevent a second petition on the very same cause of action raised in the earlier petition which has been rejected under Section 86(1) of the RP Act. In the above said circumstances, this court is of the view that, the election petitioner is barred from filing second election petition (ELP No.7 of 2021) under Section 11 of CPC, and the principles of res judicata squarely applies to second Election petition. Thus, the Original application in O.A.No. 38 of 2022 deserves to be allowed and ELP No.7 of 2021 is liable to be rejected under Order VII, Rule 11(d) of CPC.

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY 37

In the result, (i) ELP (Filing) No.54183 of 2021 and O.A.No.553 of 2021 are dismissed, (ii) O.A.No.38 of 2022 is allowed and the ELP No.7 of 2021 is rejected in toto. (iii) Consequently, * **O.A.No.679 of 2021 is closed (iv)The Election Commission of India is permitted to release the EVMs used in the above said Election (v)*** Considering the peculiar facts and circumstances of the case, both parties are directed to bear their respective costs.

***Order portion amended as per order of this Hon'ble Court Dated 10/03/2022 made in O.A.No.680 of 2021 in ELP.No.7 of 2021. ***

SD./-
ASSISTANT REGISTRAR
Original Side - II

WITNESS, THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI,
CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 25TH DAY
OF FEBRUARY 2022.

SD./-
ASSISTANT REGISTRAR
Original Side - II

//Certified to be true copy//

Dated at Madras this the 16th day of March 2022.

COURT OFFICER (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KG
04/03/2022

ELP.NO.7 OF 2021 ELP (FILING)
NO.54183 OF 2021 OA.NOs.553, 679,
680 OF 2021 & OA.NO.38 OF 2022

ORDER
DATED: 25.02.2022

AMENDED ORDER
DATED: 10.03.2022

THE. HON'BLE MR. JUSTICE
V. BHARATHIDASAN
FOR APPROVAL: 08/03/2022
APPROVED ON : 08/03/2022

Copy to:-

1. The Chief Electoral Officer,
Public (Elections) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi.
3. The Returning Officer,
No. 19, Chepauk-Thiruvellikeni
Assembly Constituency, Chennai.

(By Order)

MALAY MALLICK,
Principal Secretary,
Election Commission of India.

Secretariat,
Chennai-600 009,
26th April, 2022.

SATYABRATA SAHOO,
Chief Electoral Officer and
Principal Secretary to Government,
Public (Elections) Department.